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In re Application of
Richard P. Betycky et al
Serial No.: 10/607,571
Filed: June 26, 2003
Attorney Docket No.: 2685.2046

: PETITION DECISION

This is in response to a third petition under 37 CFR 1.181, filed November 9, 2006, requesting entry of an amendment after Final rejection.

BACKGROUND

A review of the file history is set forth in the previous petition decision, mailed October 3, 2006, and not repeated herein. The previous decision addressed whether the Finality of the Office action, mailed April 6, 2006, was proper. That decision was in response to a first petition filed June 6, 2006, which was not received for unknown reasons and a second petition repeating substantively the first petition and including a copy of the first petition. Included in the second petition was a section requesting review of the examiner's decision not to enter an amendment after Final rejection which section was inadvertently overlooked. This third petition was filed to correct that oversight.

DISCUSSION

Applicants' petition requests entry of an amendment after Final rejection filed July 20, 2006, in which it was proposed to cancel claims 151-152 and 154 and amend claims 140, 153 and 173. Applicants state that the amendments incorporate the limitations of the canceled claims into independent claim 140 and should have been entered. A review of the amended and canceled claims shows this to be correct.

The examiner mailed an Advisory action to applicants on August 1, 2006, refusing entry of the amendment on the basis that it did not place the application in better condition for appeal by reducing or simplifying the issues. The examiner's only explanation of this on the next page was that applicants' arguments were found unpersuasive (with respect to the rejections of record). The examiner's explanation is insufficient and inapposite to the action requested. That some claims are canceled and the independent claim is limited by incorporating the limitations of the canceled claims therein, however, does reduce and simplify the issues and the application in better form for appeal.

DECISION

The petition to enter the amendment filed July 20, 2006, is **GRANTED**. The failure to address this request in the previous petition decision is regretted.

Applicants filed an Appeal Brief with this petition which may need to be revised in view of this decision. Applicants are given ONE MONTH from the date of mailing of this decision within which to file a revised Appeal Brief, if necessary.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.



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